



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**HIGH COURT CIVIL CASE NO. 77 OF 2002**

**STEPHEN KARUOYA MWANGI ..... APPLICANT/2ND DEFENDANT**

**VERSUS**

**JOYCE MUMBI MUGI ..... RESPONDENT/PLAINTIFF**

**RULING**

By a Complaint filed on 20th May 2002, the Plaintiff who is the respondent in this application filed his suit against the applicant herein as 2nd Defendant together with 3 others. Summons were issued on 20th May 2002 for service.

On 16th July 2004 the 2nd Defendant filed a notice of appointment of advocate through Gathara Mahinda & Company. Subsequently on 27th August 2004, the applicant through his advocate sought to have the complaint struck out and the suit as against 2nd Defendant dismissed for being an abuse of the process of the court. It was the applicant's contention that the validity of the summons issued on 20th May 2002 expired after a period of 12 months and that two years after the summons was issued the Plaintiff/Respondent had not taken any further action in the suit and was merely using the suit to unlawfully continue occupation of the suit property and to unfairly halt the prosecution of Nyeri CMCC 613 of 2002 which is a suit filed in the lower court between the same parties.

Subsequent to the filing of this application, and the Plaintiff/Respondent having been served, the Plaintiff applied for re-issue of summons and new summons were re-issued on 9th November 2004, which summons were duly served on the applicant who has duly entered appearance and defence under protest.

Mr. Mahinda who appeared for the applicant has urged this court to strike out the Plaintiff's suit as the summons expired before the order for re-issuance of the summons was made. Mr. Mahinda relied on the **Civil Appeal No. 85 of 1996 between UdayKumar Chandulal Rayani & 3 others v/s Charles Thaithi.**

The Respondent through his advocate Mr. Muguku maintains that the application is incompetent, premature, frivolous, vexatious and an abuse of the court process. He maintained that he applied for fresh summons which were properly issued and that the same have been duly served.

Mr. Muguku submitted that the application was misconceived as the applicant was relying on repealed law which gave a limit of 24 months for extension of validity of summons, and that the court not having exercised its discretion after the expiry of 24 months, the applicant cannot seek such others.

In his replying affidavit Mr. Muguku also blamed the Respondent's previous advocates for the delay in serving the summons.

I have considered the application the submissions made by both parties, the authority cited, the relevant provisions of the Civil Procedure Rules and the entire court record.

For the purposes of this application the relevant provisions of the Civil Procedure Rules are order V rules 1 (1) (2) (3) and (7). Since the advocates did not appear to be in agreement as to what these provisions state it is necessary to reproduce them herein:

Order V rule 1 states as follows:

(1) A summons (other than a concurrent summons) shall be valid in the first instance for twelve months beginning with the date of its issue and a concurrent summons shall be valid in the first instance for the period of validity of the original summons which is unexpired at the date of issue of the concurrent summons.

(2) Where a summons has not been served on a defendant the court may extend the validity of the summons from time to time if satisfied it is just to do so.

(3) Where the validity of a summons has been extended under sub-rule 2, before it may be served it shall be marked with an official stamp showing the period for which its validity had been extended. ....  
.....

(7) Where no application has been made under sub-rule 2, the court may without notice dismiss the suit at the expiry of twenty four months from the issue of the original summons.”

My understanding of these provisions is that once issued the original summons is valid for a period of 12 months. Where service has not been effected within this period the validity of the summons may be extended by the court for a specific period. This extension must however be made within the lifetime of the original summons or the extended validity period immediately it becomes apparent that it will not be possible to effect service before the expiry of the validity period.

No order for extension of validity of summons can therefore breathe new life into the summons once its lifetime has expired.

Rule 7 gives the court the discretion to dismiss the suit after the expiry of 24 months from the date of issue of summons where no services is effected and validity of summons not extended.

I have perused Order V of the Civil Procedure Rules but do not find any particular rule or provision for re-issue of summons. What is provided in the rules as observed above is extension of validity of summons. That is to say that once a summons expires without its validity being extended, the Civil Procedure Rules do not provide for re-issue of such summons. In this case it is not disputed that the original summons were issued on 20th May 2002 and expired 12 months later. It is also not disputed that the Respondent never applied for extension of the summons but applied for re-issue of the summons after the expiry of the validity period and the summons were re-issued on 9th November 2004 i.e. more than two years after the issuance of the original summons.

I find that the original summons issued to Respondent having expired, no application having been made for extension of validity period and the applicant having moved the court to dismiss the Respondent’s suit, the Respondent’s suit was as good as dead, and the Respondent could not through a mere letter resurrect the suit by requesting for reissue of summons. Indeed even under Order V rule 1(5) an application for extension of validity of summons must be supported by an affidavit setting out the efforts made at service. I find that the request for re-issue of summons was improperly made. There being no express provisions to back it, such a request could only have been made by way of an application moving the court to invoke its inherent powers under section 3A of the Civil Procedure Act. No such application having been made the re-issued summons are invalid. Twenty four months having elapsed from the date of issue of the original summons I dismiss the Plaintiff’s suit under order V rule 1 (7) of the Civil

Procedure Rules. I do not find the provisions of Order VI rule 13 to be applicable herein.

*Dated signed and delivered this 22nd day of March 2005*

**H. M. OKWENGU**

**JUDGE**